

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

AMERICAN HALLMARK INSURANCE  
COMPANY OF TEXAS, a foreign insurer,

Plaintiff,

v.

CHRISTIAN BECK, et al.,

Defendants.

Case No. C22-5565RSM

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

**I. INTRODUCTION**

This case comes before the Court on Plaintiff American Hallmark Insurance Company of Texas ("Hallmark")'s Motion for Summary Judgment. Dkt. #30. Defendant G.M. Northrup Corporation ("G.M.") has filed an opposition brief and Defendants O'Reilly Automotive Enterprises, LLC and O'Reilly Automotive Stores, Inc. have joined in that opposition. Dkts. #35 and #36. The Court has determined that it can rule without the need of oral argument. For the following reasons, the Court GRANTS Plaintiff's Motion.

**II. BACKGROUND**

This is an insurance coverage dispute. Hallmark asks the Court to determine coverage for underlying claims against G.M. for injuries sustained by pressurized sewage backflow from

1 a damaged sewer line when it erupted from a toilet at the O'Reilly Auto Parts store in Belfair,  
2 Washington. The relevant facts are not in dispute. G.M. Northrup, a general contractor, was  
3 sued by Christian Beck, Scott Holland, and Danna Holland for failing to properly design, install,  
4 identify, address, or document the location of the sewer line on or near the O'Reilly Auto Parts  
5 property. *See Christian Beck et al. v. Rhine Demolition LLC, et al.*, Pierce County Superior  
6 Court Cause No. 20-2-07117-5 (the "Underlying Lawsuit"). The full allegations need not be  
7 discussed for purposes of this Motion.  
8

9 The construction work was performed in 2013; the injury occurred in 2019. G.M.  
10 tendered the Underlying Lawsuit to Plaintiff Hallmark in April of 2022 seeking defense and  
11 indemnity as an additional insured under a policy ("Policy") issued to Hallmark's named  
12 insured, Black Hills Excavating, Inc. Black Hills was one of G.M.'s subcontractors at the  
13 Belfair site. This Policy was in effect from May 5, 2019, to May 5, 2020. Dkt. #31-1 at 3. The  
14 Policy includes Commercial General Liability ("CGL") coverage of \$1,000,000 per occurrence  
15 with a \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate.  
16 *Id.* at 6. The Policy also includes Commercial Umbrella Liability Coverage of \$5,000,000 per  
17 incident with a with a \$5,000,000 general aggregate and \$5,000,000 products-completed  
18 operations aggregate. *Id.* at 17. The Policy identifies the CGL Coverage of this Policy as  
19 "underlying insurance" with respect to the Commercial Liability Umbrella Coverage. *Id.* at 18.  
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22 The CGL is subject to the "Artisans Advantage Enhanced Coverage Endorsement." *Id.*  
23 at 179. Under that Endorsement, an insured is "any person or organization (referred to as an  
24 Additional Insured) whom you are required to add as an Additional Insured on this policy  
25 under: a. a written contract or agreement; and b. where a certificate of insurance showing the  
26 person or organization as an additional insured has been issued; and c. when the written contract  
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1 or agreement and certificate of insurance are currently in effect or becoming in effect prior to  
 2 the [injury event].” *Id.* at 198–99. There is also a “Blanket Additional Insured Completed  
 3 Operations Endorsement,” which includes as an insured “any person or organization for whom  
 4 you are performing operations when you and such person or organization have agreed in writing  
 5 in a contract or agreement that such person or organization be added as an additional insured for  
 6 completed operations.” *Id.* at 217. The Umbrella Coverage requires than an additional insured  
 7 follow the above requirements. *Id.* at 219.

9 The tender to Hallmark included a copy of an October 1, 2012, subcontractor agreement  
 10 between G.M. and Black Hills for demolition, excavation, and installation of sewer lines and  
 11 other systems at the O’Reilly Store. Importantly, the agreement states:  
 12

13 E. INSURANCE: Subcontractor agrees to provide a Certificate of  
 14 Insurance with G.M. Northrup Corporation as “Additional  
 15 Insured” on a primary and non-contributory basis.

16 ...

17 G. INDEMNIFICATION: Subcontractor shall indemnify and save  
 18 harmless the Contractor and its officers and employees, from all  
 19 claims, loss, damage, injury, costs and expenses of whatsoever any  
 20 kind or nature (including attorney’s fees) however the same may  
 21 be caused resulting directly or indirectly from the nature of the  
 22 work covered by the Subcontractor, and without limiting the  
 23 generality of the foregoing, the same shall include the injury or  
 24 death of any person or persons and damage to any property,  
 25 including but not limited to the Owner.

26 Dkt. #31-2.

### 27 **III. DISCUSSION**

#### 28 **A. Legal Standard for Summary Judgment**

Summary judgment is appropriate where “the movant shows that there is no genuine  
 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.

1 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are  
2 those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at  
3 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of  
4 the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco,*  
5 *Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny &*  
6 *Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

8 On a motion for summary judgment, the court views the evidence and draws inferences  
9 in the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*  
10 *Dep’t of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004). The Court must draw all reasonable  
11 inferences in favor of the non-moving party. See *O’Melveny & Meyers*, 969 F.2d at 747, *rev’d*  
12 *on other grounds*, 512 U.S. 79 (1994). However, the nonmoving party must make a “sufficient  
13 showing on an essential element of her case with respect to which she has the burden of proof”  
14 to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

16 In Washington, the standard for interpreting insurance contracts is well-settled. *Canal*  
17 *Ins. Co. v. YMV Transp., Inc.*, 867 F. Supp. 2d 1099, 1104 (W.D. Wash. 2011). “Interpretation  
18 of insurance policies is a question of law and the policy is construed as a whole with the court  
19 giving force and effect to each clause in the policy.” *Id.* (citing *American Star Ins. Co. v. Grice*,  
20 121 Wn.2d 869, 874, 854 P.2d 622 (1993)). The words of an insurance policy should be  
21 construed according to their ordinary meaning, according to how an average person would read  
22 the terms, as opposed to applying any technical interpretation. *Id.* If the provisions of an  
23 insurance contract are unambiguous and easily comprehended, the intent expressed in the policy  
24 will be enforced regardless of the intent of the parties. *Jeffries v. General Cas. Co. of America*,  
25 46 Wn.2d 543, 283 P.2d 128 (1955). But if an insurance contract is ambiguous “and fairly  
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1 susceptible of two different conclusions, the one will be adopted most favorable to the insured.”  
2 *Guaranty Trust Co. v. Continental Life Ins. Co.*, 159 Wash. 683, 294 P. 585 (1930).

3 **B. Analysis**

4 Hallmark’s argument is simple: G.M. does not qualify as an additional insured under the  
5 Policy because the injury occurred after the construction work was completed and G.M. was not  
6 added as an additional insured “for completed operations.” G.M. would therefore not be  
7 insured by Hallmark and not be entitled to either a defense or indemnity.  
8

9 G.M. is not a named insured under the 2019 Hallmark Policy. It is clear that G.M.  
10 contracted with Black Hills to be added as an additional insured under some insurance policy.  
11 The question is whether G.M. is an additional insured under this Policy, issued in 2019.  
12

13 Hallmark first argues that G.M. cannot qualify as an additional insured under the  
14 endorsement for ongoing operations because all the work (and the contract) were completed  
15 back in 2012–13, well prior to the 2019 Hallmark Policy. G.M. agrees. *See* Dkt. #35 at 9.  
16

17 Hallmark next argues G.M. cannot be an additional insured under the endorsement for  
18 completed operations because that requires agreement in writing that “such organization be  
19 added as an additional insured *for completed operations*” and the subcontractor agreement  
20 between G.M. and Black Hills only states “Subcontractor agrees to provide a Certificate of  
21 Insurance with G.M. Northrup Corporation as ‘Additional Insured’ on a primary and non-  
22 contributory basis.” *See* Dkt. #30 at 22. The magic words “completed operations” are missing.  
23 Hallmark indicates G.M. cannot be an additional insured under any other part of the Policy.  
24

25 In Response, G.M. says that because the agreement between it and Black Hills “*does not*  
26 *limit* the additional insured requirement to only ongoing operations.... [it] necessarily includes  
27 additional insured status for *completed operations*.” Dkt. #35 at 11 (emphasis in original). This  
28

1 is more of a legal argument than a factual one. G.M. cites to *Pardee Const. Co. v. Ins. Co. of*  
 2 *the W.*, 92 Cal. Rptr. 2d 443 (Cal. Ct. App. 2000) and *Hartford Ins. Co. v. Ohio Cas. Ins. Co.*,  
 3 189 P.3d 195, 202 (Wash. Ct. App. 2008) as cases supporting this concept. G.M. points out that  
 4 the Endorsement at issue does not explicitly require magic words. *Id.* at 13 (“The Endorsement  
 5 does not state, for example, that the Subcontract must contain the phrase “completed  
 6 operations.”). G.M. argues that any ambiguity must be interpreted in its favor:

8 Even if the Endorsement could reasonably be read to require that  
 9 the Subcontract contain the words “completed operations,” it can  
 10 also reasonably be read to require only that the parties agreed to  
 11 completed operations coverage, however that agreement is worded.  
 12 At most, that makes the Endorsement ambiguous and it must  
 13 therefore be construed in favor of coverage. *Kaplan*, 65 P.3d at 23  
 (“When an ambiguity in the policy exists, a meaning and  
 construction most favorable to the insured must be applied, even  
 though the insurer may have intended another meaning.”).

14 *Id.*

15 On Reply, Hallmark argues that the Court cannot ignore the clear language of the  
 16 insurance contract, and that the cases cited by G.M. are not on point.

17 The Court agrees with Hallmark. The *Pardee* decision hinged on the insurer’s failure to  
 18 use language expressly excluding completed operations coverage from the additional insured  
 19 endorsements at issue. The Hallmark Policy language here is clear and unambiguous. G.M.’s  
 20 interpretation requires the Court to delete words from the Blanket Additional Insured  
 21 Completed Operations Endorsement. The subcontractor agreement does not mention completed  
 22 operations coverage, or anything to that effect. *Pardee* and *Hartford* would suggest that it need  
 23 not mention such for G.M. to qualify as an additional insured for completed operations. These  
 24 cases help the Court interpret the subcontractor agreement, but not the Policy. This Policy has  
 25 two separate endorsements, one dealing with ongoing and one with completed operations, and  
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1 the latter explicitly requires an “agree[ment] in writing... [to] be added as an additional insured  
2 for completed operations.” Because G.M. cannot point to such in the record, it is not an  
3 additional insured and Hallmark does not have a duty to defend or to indemnify for the claims  
4 in the Underlying Lawsuit.

#### 5 IV. CONCLUSION

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7 Having reviewed the relevant briefing and the remainder of the record, the Court hereby  
8 finds and ORDERS that Plaintiff Hallmark’s Motion for Summary Judgment, Dkt. #30, is  
9 GRANTED as stated above. This case is CLOSED.

10 DATED this 19<sup>th</sup> day of July, 2023.

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14 RICARDO S. MARTINEZ  
15 UNITED STATES DISTRICT JUDGE  
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